

STATE OF WISCONSIN

CIRCUIT COURT

WAUKESHA COUNTY

Clerk of Circuit Court

Joseph Voiland
519 Green Bay Road,
Cedarburg, WI
Petitioner,
v.

Petition for Writ of Mandamus
Case Code: 30952
Case No.

Waukesha County
2018CV002129

Waukesha Circuit Court Judge Jennifer
Dorow
515 W. Moreland Blvd.
Waukesha, WI 53188

PETITION FOR WRIT OF MANDAMUS

This is an action to enforce Wisconsin's Open Records Law, Wis. Stat §§ 19.31-19.39.

State law declares it the public policy of this state that every citizen is presumptively entitled to complete access to the records of state and local government.

Petitioner Joseph Voiland, by his attorneys, Nistler Law Office, s.c., hereby petitions this Court for a writ of mandamus directing the Respondent, Jennifer Dorow, to produce records requested by the Petitioner, alleging to the Court as follows:

FACTUAL ALLEGATIONS

1. Petitioner Joseph Voiland is an adult resident of Wisconsin residing at the address listed in the caption.
2. Respondent Jennifer Dorow is a Waukesha County Judge with a business address of 515 W. Moreland Blvd. Waukesha, WI. Judge Dorow is also the Chief Judge of Judicial District III, overseeing Waukesha, Ozaukee, Washington and Jefferson County Circuit Courts.
3. Judge Dorow is an "Authority" under Wis. Stat. § 19.32(1).
4. On February 26, 2018, Judge Dorow directed Retired Dane County Judge Patrick Fiedler to investigate claims by Voiland concerning Ozaukee County Officials.

Attached as Exhibit 1 is a copy of Judge Dorow's directive.

5. On or about July 3, 2018, Judge Fiedler released a report on the results of his investigation. Judge Fielder noted on page 3 of his report that the investigation "included review of numerous documents." None of these documents were attached to the report.

6. On July 18, 2018, Petitioner, through counsel wrote a letter to Director of State Courts Randy Koschnick, and cc'ed Judge Dorow, noting that "the report itself does not attach or include copies of the supporting documentation upon which it is based" and requested those documents citing Wis. Stat. § 19.31. A true and correct copy of that letter is attached hereto as Exhibit 2.

7. Later that day, Judge Koschnick wrote Petitioner's counsel back, indicating "I construe your correspondence as a public records request for 'all documents gathered by your office and by the investigator incident to the investigation.' I will respond to your request as soon as practicable and without delay." A copy of that communication is attached hereto as Exhibit 3.

8. Counsel for petitioner followed up on July 27, 2018. Because the Report suggested that the documents were incorporated into the findings of the report, Counsel for Petitioner believed it was certainly practicable to send the referenced documents within a week, and more than a week had passed. This also presented as an urgent matter, because media outlets were reporting on the findings during this time, and without having access to documentation, Petitioner was being harmed by not being able to address questions and inaccuracies spread by the media.

9. Judge Dorow also responded to Counsel for Petitioner on August 1, 2018, writing, in pertinent part, "I did not provide a response to your correspondence dated July 18,

2018, as that letter was directed to Judge Koschnick and not me. If you were looking for a response from me, that was not clear. My understanding is that Judge Koschnick promptly acknowledged receipt of your July 18 letter. Furthermore, just today Judge Koschnick responded to the email by advising that the matter is still under consideration and being processed. Thus, it appears to me your request is being addressed by the Director and no further action by me is needed.” A true and correct copy of that correspondence is attached hereto as Exhibit 4.

10. On August 14, 2018, Judge Koschnick wrote to counsel for petitioner stating “Please be advised as follows concerning your July 18 open records request: I have requested copies of documents from Attorney Fiedler that I believe I am required to procure in response to your request. I have not previously viewed or possessed said documents. Obtaining copies of these documents has taken longer than I originally anticipated. I expect to receive these documents from Attorney Fiedler within the next day or two. That will complete my collection of records in response to your request and I will provide them to you as soon as they are provided to me. Thank you for your patience and understanding. “

11. Later that day, counsel for Petitioner responded to both Judges Koschnick and Dorow, stating in pertinent part “Please note that our Open Records Request applies not only to records maintained by the Director of State Courts and the investigator, but also to any relevant records maintained by Judge Dorow and by her District Court Administrator, as both act in cooperation with the Director of State Courts and each other in carrying out their administrative duties set forth in the law. *See, e.g., Wisconsin Supreme Court Rules 70.19(2) and 70.16(4).*” The quoted portion of this correspondence is attached hereto as Exhibit 5.

12. The following day, Judge Dorow replied in pertinent part by stating, “Please

note you have not previously made an open records request of me. I even made reference to that in a prior email explaining why I hadn't responded to the request you made of the Director. Clearly you are now making such a request in your most recent email, but I am unclear what it is you are seeking. Therefore, please clarify what it is you are requesting so that I may respond accordingly." A true and correct copy of this correspondence is attached hereto as Exhibit 6.

13. The following day, August 16, 2018, counsel for petitioner wrote Judges Koschnik and Dorow stating in pertinent part "In hopes of resolving any misunderstanding or dispute that may remain, this serves as an independent request for all records in the possession, custody or control of the investigator, District Chief Judge Dorow, the District Court Administrator and the Director of State Courts relating to the administrative investigation that led to the July 3, 2018 'Confidential' report, as well as for any copy of the investigator's report that is not designated 'confidential.'" A true and correct copy of this correspondence is attached hereto as Exhibit 7.

14. On August 17, 2018, Judge Dorow responded, denying that the August 16 request was encompassed in the original request but also writing "please accept this email as an acknowledgment of your open records request. I will respond to your request as soon as practicable and without delay." A true and correct copy of that communication is attached hereto as Exhibit 8.

15. On August 31, 2018, Judge Dorow responded to the open records request without providing any documents but asking for clarification. A true and correct copy of that communication is attached hereto as Exhibit 9.

16. Later that afternoon, Petitioner himself provided the clarification. He wrote

“My request asked for all records relating to the administrative investigation that led to the July 3 report. While you say you cannot be sure which records “led” to the report, you have misread the request. The request does not ask for all records that “led to” the report. The request asks for all records relating to the investigation, while the investigation led to (or culminated in) the report. Therefore, please provide all records relating to the administrative investigation.” A true and correct copy of that communication is attached hereto as Exhibit 10.

17. No response came for almost three weeks, then Judge Dorow responded on September 18, 2018, claiming Exhibit 10 was a modification to the request. A true and correct copy of that communication is attached hereto as Exhibit 11. Counsel for Petitioner responded the next morning denying a modification was made. A true and correct copy of that communication is attached hereto as Exhibit 12.

18. An additional 4 weeks passed and Judge Dorow on October 17, 2018 wrote counsel for Petitioner stating “I am working with the Director's office on my response and will get it to you as soon as possible. Thank you for your understanding.” A true and correct copy of that communication is attached hereto as Exhibit 13.

19. Two days later, on October 19, 2018, Judge Dorow sent a letter to Counsel for Petitioner sending a response to Today's TMJ4 that had been prepared and sent more than six months earlier (several months before the subject investigation was complete) and attempted to use it as a response to Petitioner's Open Records Request. At the end of the letter, Judge Dorow stated “To the extent you may view any portion of this response as a denial of your request, such a decision would be potentially subject to review in an action for mandamus under Wis. Stats. §19.37(1), or by application to the local district attorney or the Attorney

General.” A true and correct copy of that communication is attached hereto as Exhibit 14.

CAUSE OF ACTION - VIOLATION OF § 19.35(4) -Illegal Delay in Producing Records

20. The preceding paragraphs are hereby incorporated and realleged as if fully stated herein.

21. Under Wis. Stat. § 19.31, it is the declared public policy of this state that every citizen is entitled to the greatest possible information regarding the affairs of government. The statute provides that “[t]he denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied, establishing a presumption of complete public access to government records, consistent with the conduct of governmental business.”

22. Wis. Stat. § 19.35(1)(a) and (b) provide that “any requester has a right to inspect any record” and “to make or receive a copy of a record.”

23. Subject to qualifications not relevant here, Wis. Stat. § 19.32(2) defines a record as “any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or kept by an authority.”

24. Under Wis. Stat. § 19.35(4)(a), “each authority, upon request for any record, shall, as soon as practicable and without delay, either fill the request or notify the requestor of the authority’s determination to deny the request in whole or in part and the reasons therefor.”

25. The Attorney General of Wisconsin has opined that “ten working days generally is a reasonable time for responding to a simple request for a limited number of easily identifiable records.” Wis. Dep’t of Justice, Attorney General Brad D. Schimel, *Wisconsin Public Records Law Compliance Guide*, November 2015, at 15. “Requests for public records should be given high priority.” *Id.*

26. An authority must either fulfill or deny an open records request; offering to comply at some unidentified time in the future is not authorized by law. *WTMJ, Inc. v. Sullivan*, 204 Wis. 2d 452, 457-58, 555 N.W.2d 140 (Ct. App. 1996).

27. It has been over four months since Voiland made his open requests, and over three months since Judge Dorow agreed to respond to them, and she has failed to comply with her obligations under the Open Records Law.

28. No explanation Judge Dorow could offer would justify refusing to respond..

29. Judge Dorow has acted in a wholly arbitrary and capricious matter in needlessly delaying response to Voiland's record requests.

30. Therefore, Judge Dorow has violated the Open Records Law and Wis. Stat. § 19.35(4) by failing to fulfill or deny the record request "as soon as practicable and without delay."

31. "If an authority ... delays granting access to a record or part of a record after a written request for disclosure is made, the requester may ... bring an action for mandamus asking a court to order release of the record." Wis. Stat. § 19.37(1), (a).

RELIEF REQUESTED

WHEREFORE, the Petitioner demands a writ of mandamus to issue against the Respondent under Wis. Stat. § 19.37(1):

1. Compelling the Respondent to immediately produce the requested records;
2. Declaring the Petitioner's rights and limiting the Respondent's conduct with respect to the requested records;
3. Awarding the Petitioner punitive damages under Wis. Stat. § 19.37(3);
4. Awarding the Petitioner his reasonable attorney fees, damages of not less than

\$100, and other actual costs under Wis. Stat. § 19.37(2), and;

5. Awarding such other relief as the Court deems appropriate.

Dated November 20, 2018

NISTLER LAW OFFICE, s.c.
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